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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,950

05/16/2005

Yasunobu Saito

Nisshin-2(FP254US)

1677

7265 7590 04/03/2009

MICHAELSON & ASSOCIATES

P.O. BOX 8489

RED BANK, NJ 07701-8489

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/534,950</p>	<p><b>Applicant(s)</b> SAITO ET AL.</p>	
	<p><b>Examiner</b> Brent T. O'Hern</p>	<p><b>Art Unit</b> 1794</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-9.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/BTO/  
Brent T. O'Hern  
Examiner, Art Unit: 1794

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794

Continuation of 3. NOTE: Amended independent claim 1 includes amendments that require further consideration/search and do not place the application in better form for appeal. The amendments to claims 2 and 7 are non compliant..

Continuation of 11. does NOT place the application in condition for allowance because:

The amendments will not be entered for the reasons discussed above.

Amended independent claim 1 includes limitations not previously presented in the dependent claims.

There is a typographical error with regard to the names of the references which are referred to as "Cawing" and "Liar" .

On page 7, paragraph 3 of Applicant's Paper filed 3/20/2009 Applicant argues that Hamm is not an applicable reference because it has a publication date after the Japanese priority date for Applicant's application. It is noted Hamm was filed April 25, 2002 which is prior to Applicant's priority date of November 25, 2002.

Applicant's arguments are substantially non commensurate in scope with the claims. Perhaps Applicant is confusing US and Japanese patent law.

Applicant seems to be arguing (See pp. 5-9 of Applicant's Paper filed 3/20/2009.) that one would not alternatively substitute the starches as taught by Qiang and Hamm because Applicant's invention is for a semi-solid dressing with a higher viscosity and Qiang's dressing is a liquid dressing. It is noted that Applicant does not claim a non-liquid dressing. Furthermore, it is unclear what is the connection between the starches not being alternatives and Applicant's assertion that its' unclaimed invention in semi-solid. Additionally, Applicant does not does present any specific analysis or evidence of why the various starches are not alternatives.

In response to Applicants arguments regarding the cancelled limitations of claims 6 and 7 (See p. 7, paras. 4-5 of Applicant's Paper filed 3/20/2009.), it is noted that it is unclear what Applicant is trying to say since the cancelled limitations have not been added to independent claim 1 and are not issues.

The declaration of SATO has been considered, however, it is not persuasive in overcoming the rejections of record as it is not commensurate in scope with the limitations of the claims. Whether or not Qiang's dressing is not semi-solid and has a different viscosity from Applicant is not an issue as said viscosity properties are not claimed limitations and Qiang is not cited for teaching a particular viscosity but rather the particular starch and gums, which Applicant does not precisely address.

/BTO/  
Brent T. O'Hern  
Examiner, Art Unit: 1794